

REMARKS

This Amendment and Request for Reconsideration is filed in response to the Office Action dated February 12, 2002 and is intended to be fully responsive thereto. An appropriate request for an extension of time and requisite fee for the extension, as well as the addition of further claims are included herewith.

Claims 14-15 were objected to for a minor typographical error whereby these claims incorrectly depend from cancelled claim 1. Applicant has corrected this informality by amending the dependency of claims 14 and 15. Applicant has also amended claim 49 to remove a typographical error. No new matter has been entered.

Pending claims 13-20 and 22-51 were rejected under 35 U.S.C. §103(a) as being unpatentable over Shea (USP 5,314,087) in view of Aghassipour (USP 5,595,320). Claims 13-45 were rejected under 35 U.S.C. §103(a) as being unpatentable over Shea '087 in view of Aghassipour '320 and McCord (U.S. Patent No. 727,749). These rejections are respectfully traversed in view of the following comments.

Every pending claim requires a top formed from at least one flap where the flap is integral with a sidewall. Specifically, pending claims 13-33, 37-42 and 46-51 require a top formed from first and second side flaps and front and back flaps, where the flaps are integral with the first and second sidewalls, the front end and the back end, respectively. Pending claims 34-36 require a top formed from first and second side flaps, where the side flaps are integral with the first and second sidewalls, respectively. Pending claims 43-45 require a top formed from a flap that is integral with a sidewall.

None of the asserted prior art teaches a top made from a flap that is integral with at least one of the sidewalls, the front end or the back end. Shea '087 teaches only a separate lid that rests upon an open area of the inner liner. (see lid 15 in Fig. 2 and lid 4 in Fig. 4). Aghassipour '320 teaches an insulating bag having one open end and one closed end, and fails to teach any type of flap that forms a top for the insulating bag. The combination of Shea '087 and Aghassipour '320 lacks specific elements of the claimed invention (i.e., the top); therefore, the rejection of claims 13-20 and 22-51 under 35 U.S.C. §103(a) must be withdrawn. Notably, McCord '749 also teaches a separate lid 'B' that is placed on top of the sidewalls.

It is also noted the claims 13-33, 37-42 and 46-51 require sidewalls and front and back walls "forming an integral moisture proof seal with said bottom and each other". Pending claims 34-36 require "first and second sidewalls forming an integral moisture proof seal with said bottom and each other". Likewise, claim 43 requires a "sidewall forming an integral moisture proof seal with and along said entire periphery of said bottom." In view of the foregoing limitations of the currently pending claims, it is respectfully submitted that any modification of the prior art of record, such as McCord '749, would fail to meet the limitations of the "top" and the "integral moisture proof seal" required by all of the pending claims. McCord '749, for example, teaches foldable pasteboard boxes, such as commonly used by milliners for holding ladies hats and bonnets. McCord nowhere states that his collapsible box construction is to be utilized, or for that matter capable of being utilized, to transport temperature sensitive contents in a moisture-controlled environment, such as the present invention.

Additionally, many features of the dependent claim are not taught or rendered obvious by the prior art. In particular, dependent claim 18 recites “a selective resealable means for securing a portion of said first side flap to a portion of said second side flap,” and dependent claim 19 recites “a means for sealing said top”. The features of claim 18 and 19 are not shown or suggested in the prior art.

Dependant claims 48 and 49 teach an arrangement where a portion of the inner container is in “direct contact” with the outer container when it is inserted in the outer container. Shea ‘087 explicitly teaches away from the arrangement of claims 48 and 49. Any modification of Shea ‘087 in this regard would impermissibly destroy the intend purpose and function of Shea ‘087, because Shea ‘087 requires a “spacer tray 3” to provide a partially surrounding layer of air 11 that “allows further maximization of the thermal containment properties of the radiant barrier material.” See col. 3, lines 59-63 of Shea ‘087. Aghassipour ‘032 and McCord ‘749 do not teach any arrangement where an inner insulating container fits into an outer container.


In summary, it is submitted that the inner liner of Shea ‘087 does not teach integral foldable side, front or back flaps that fold to provide a top as in the present invention. Shea ‘087 also teaches directly away from an arrangement where the inner liner is in direct contact with the outer container. Shea ‘087, likewise, does not teach that the height of these flaps is selectively adjustable and in contrast also requires that the radiant barrier material be loosely encased in a pouch so that it can float therein.

The Aghassipour ‘320 and McCord references, cited by the Examiner, likewise provides no teaching or suggestion to make up for the above listed deficiencies in the Shea reference.

Applicant respectfully submits that all claims are in condition for allowance and respectfully requests same. If the Examiner has any questions concerning this amendment, he is invited to contact Applicant's Attorney at the below listed telephone number.

Respectfully submitted,

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In re John W. Becker  
09/492,811



In re Application of:

John W. Becker

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For: METHOD AND APPARATUS FOR  
PACKING PERISHABLE GOODS

Group Art Unit: 3721

Examiner: H. Desai

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### APPENDIX SHOWING AMENDMENTS

#### In the Claims:

Please amend the claims as follows:

14. (Twice Amended) The container of claim [1] 13, wherein said flexible insulating material is bubble pack material.

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15. (Twice Amended) The container of claim [1] 13, wherein said flexible insulating material is microfoam.

49. The [said] container of Claim 13 wherein a portion of said metalized surface is in direct contact with said outer container when it is inserted in said outer container.